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May 19, 2009

TO: INTERESTED PARTIES

Enclosed is a copy of Special Taxes Current Legal Digest (CLD) 2009-1 for your information and review. Included in this CLD are proposed annotations (text underlined) and/or suggested revisions to or deletions of existing annotations (indicated by strikeout and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Friday, June 19, 2009**. These may be sent by email using the "Comments Form" on the Board's website [www.boe.ca.gov/sptaxprog/cld\\_comments.htm](http://www.boe.ca.gov/sptaxprog/cld_comments.htm), by fax, or by mail. Here is the mailing address:

Board of Equalization  
Operations Section, Property and Special Taxes Department  
ATTN: Annotation Coordinator (Special Taxes)  
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Please note: The proposed annotations and/or suggested revisions to existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at the end of which time any questions are addressed and suggested modifications are taken into consideration. After approval of the final version by the Board's Legal Department, the changes will be posted to the Board's website under "Annotations" ([www.boe.ca.gov/sptaxprog/spannotations.htm](http://www.boe.ca.gov/sptaxprog/spannotations.htm)). Copies of the backup correspondence will be linked to each annotation via the annotation title. The CLD will remain archived on the web page for reference until the updated annotations are published in Volumes 3 and 4 of the *Business Taxes Law Guide*.

This CLD is posted on the Board's website at [www.boe.ca.gov/sptaxprog/spannotations\\_cld.htm](http://www.boe.ca.gov/sptaxprog/spannotations_cld.htm).

You may also subscribe to our email notification service in order to access Current Legal Digests on line. Sign up at [www.boe.ca.gov/sptaxprog/cld\\_subscribe.htm](http://www.boe.ca.gov/sptaxprog/cld_subscribe.htm).

If you have any questions, please contact Peter Gaffney at 916-322-4284.

Sincerely,

/s/ David J. Gau

David J. Gau  
Deputy Director  
Property and Special Taxes Department

DJG:pcg  
Enclosure

**SPECIAL TAXES CURRENT LEGAL DIGEST NO. 2009-1****May 18, 2009**

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**ENVIRONMENTAL FEES ANNOTATIONS****CALIFORNIA TIRE FEE****Demonstrator Vehicle Tires**

When a motor car dealer puts a vehicle in its resale inventory to taxable use as a demonstrator vehicle, the dealer must self-report the tire fee on the new tires mounted on the vehicle and remit the fee to the Board if the dealer cannot establish that the fee on these tires has already been paid. Likewise, if the dealer mounts the spare tire on the vehicle while it is still in use as a demonstrator vehicle, the dealer must also self-report and remit to the Board the fee on the spare tire at the time it is mounted on the vehicle. However, if the spare tire is still new, i.e., it has never been mounted on a vehicle, at the time the dealer sells the demonstrator vehicle to the end user, the dealer shall collect the tire fee on the spare tire from the end user at the time of sale and remit it to the Board. In addition, if the dealer mounts new tires on a demonstrator vehicle when the dealer sells the vehicle to the end user, the dealer must collect the fee on the new tires from the end user and remit the fee to the Board. 8/22/07.

**Retail Purchaser - Lift Crane Services and Rental**

A general engineering company that provides lift crane services and rentals to California customers must self-report and pay the California Tire Fee to the Board on "new tires," as defined (Pub. Resources Code, §42885, subd. (g)), that are mounted on a support fleet vehicle or lift fleet crane the company purchases from an out-of-state vendor for use in California. Unless the company can show that it paid the tire fee to the vendor at the time of purchase, the provisions of Sales and Use Tax Regulation 1620, subdivision (b)(3)-(5), regarding vehicles and other property purchased for use in this state, will be applied, by analogy, to determine whether the support fleet vehicle or lift fleet crane on which the new tires were mounted was purchased for use in this state and, accordingly, whether the tire fee is due. 3/27/08; 7/3/08; 8/25/08.

**ELECTRONIC WASTE RECYCLING FEE****Sale of Covered Electronic Devices (CEDs) to Foreign Diplomats, Foreign Consulates, Embassies, and Missions**

Personal Tax Exemption Cards issued by the United States Department of State, Office of Foreign Missions to duly accredited consulate, embassy, or eligible international organization employees do not provide a basis for exemption from the covered electronic waste recycling (eWaste) fee. Accordingly, the bearer of a Personal Tax Exemption Card is required to pay the eWaste fee when purchasing a CED from a retailer in California. However, a "foreign mission," "foreign consulate," "foreign embassy," "international organization," or any similarly-described

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entity is not included in the definition of "person" under the eWaste Act and is, therefore, not a "consumer" who is required to pay the eWaste fee. Accordingly, the eWaste fee does not apply to purchases of CEDs made by foreign consulates, embassies, international organizations, or similarly-described entities in California. Thus, for example, when an embassy employee can establish that he or she is purchasing a CED for embassy use, and not for the personal use of the employee, the fee is not due on the purchase. 4/20/09.

## **HAZARDOUS SUBSTANCES TAX – ENVIRONMENTAL (CORPORATION) FEE**

### **~~Lessee and Lessor~~**

~~The fee may be imposed on both a lessee and a lessor with respect to the same equipment. 3/13/92A.~~

Delete annotation – The environmental fee is imposed on an organization based on the number of employees employed by the organization. Whether an organization is a lessee or a lessor is irrelevant to the determination. There is no relation between the fee and whether the organization is a lessor or lessee of equipment, and the backup opinion does not provide any clarification.

### **Limited Liability Companies**

~~Limited Liability Companies are not subject to the Environmental Fee imposed in Health and Safety Code section 25205.6. 8/13/97.~~

Delete annotation – Health and Safety Code Section 25205.6, subdivision (a), was amended in 2006 to impose the fee on "organizations" and to specifically include limited liability companies in the definition of "organization."

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## **EXCISE TAXES ANNOTATIONS**

### **ALCOHOLIC BEVERAGE TAX**

#### **Regulation 2550**

No deduction should be allowed for "unintentional destruction" of distilled spirits unless all requirements of Regulation 2550(a) are met, including that the exact quantity destroyed must be known, and the claimant must submit both a statement under oath and proof of loss in the form of paid insurance or carrier claims. A taxpayer who cannot meet all of the requirements of Regulation 2550(a) is limited to claiming the "unaccounted for losses" of no more than 0.1 percent of total sales of distilled spirits, as provided in Regulation 2550(b). 4/2/03.

### **EMERGENCY TELEPHONE USER SURCHARGE**

#### **~~Service Supplier – Cellular Telephone Service – Out-collect Revenues~~**

~~Regulation 2406 requires the service supplier that provides the intrastate telephone~~

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~~communication to the user to collect and remit the 911 surcharge to the state. In the context of cellular telephone service, and pursuant to Rev. & Tax. Code Section 41021 and Regulations 2401 and 2406, the Board presumes that the home carrier is acting only as the "billing agent" of the host carrier, and that the host carrier that actually provides the service is responsible to collect and remit the surcharge to the Board. 6/3/98. (M99-1). (Am 2003-1).~~

Delete annotation – Section 41020 was amended effective January 1, 2002, to add subdivision (d), which provides that mobile telecommunication services shall be deemed provided by a customer's home service provider, if the services are provided in a taxing jurisdiction (e.g., this state) to the customer and the service charges are billed by or for that home service provider. Accordingly, the customer's home service provider, or "home carrier," is now deemed to be the provider of the customer's mobile telecommunication service in California (pursuant to Regulation 2406, subdivision (a)), if the charges for those services are billed by or for the home carrier. The home carrier is not the billing agent (pursuant to Regulation 2406, subdivision (c)) as the Board previously presumed. Therefore, the annotation is inconsistent with this provision.

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## FUEL TAXES ANNOTATIONS

### OIL SPILL RESPONSE, PREVENTION, AND ADMINISTRATION FEES

#### Petroleum Products – Alcohol

~~Alcohol, which is a product of a petrochemical plant, is not considered a petroleum product, but blended fuel made of gasoline and alcohol is a petroleum product. 7/24/91.~~

Delete annotation – This guidance is now contained in Regulation 2240(b)(1), which was adopted in 2001.

### DIESEL FUEL TAX

#### Bus Operations – Private Entity Bus Operator Under Contract to Regional Center

~~Transportation services provided by a bus operator, a private entity, under contract with a regional center, a private nonprofit corporation, do not qualify as "exempt bus operations" under section 60039(a). Section 60039(a)(2) requires that the bus operator, as a private entity, must provide transportation services under contract or agreement with a "public agency." As a private nonprofit corporation, the regional center is not a "public agency." Accordingly, transportation services provided by a private entity under contract with a regional center do not qualify as an "exempt bus operation" under section 60039(a)(2) or any other subdivision of section 60039. 8/21/06.~~

Delete annotation – The Legal Department has concluded that the analysis contained in the back-up letter to the annotation is incorrect.

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**Bus Operations - Private Entity Bus Operator Under Contract to Regional Center**

Where a private entity bus operator is providing transportation services for the transportation of developmentally disabled persons and their support persons under contract with a regional center, which is deemed to be a public agency authorized to provide public transportation services, the bus operator is operating an exempt bus operation pursuant to section 60039(a)(2) of the Diesel Fuel Tax Law and is, accordingly, exempt from paying the diesel fuel tax imposed under section 60050 on diesel fuel consumed while providing such transportation. (See also sections 60141, 60205, and 60502.2 for exempt bus operator license, return, and tax requirements.) 2/25/09.

**USE FUEL TAX****Bus Operations – Regulation 1323****Private Entity Bus Operator Under Contract to Regional Center**

~~Transportation services provided by a bus operator, a private entity, under contract with a regional center, a private nonprofit corporation, do not qualify for exemption under section 8655(b). Section 8655(b)(2) requires that the bus operator, as a private entity, must provide transportation services under contract or agreement with a "public agency." As a private nonprofit corporation, the regional center is not a "public agency." Accordingly, transportation services provided by a private entity under contract with a regional center do not qualify for exemption under section 8655(b)(2) or any other subdivision of section 8655. 8/21/06.~~

Delete annotation – The Legal Department has concluded that the analysis contained in the back-up letter to the annotation is incorrect.

**Private Entity Bus Operator under Contract to Regional Center**

Where a private entity bus operator is providing transportation services for the transportation of developmentally disabled persons and their support persons under contract with a regional center, which is deemed to be a public agency authorized to provide public transportation services, the bus operator is, pursuant to section 8655(b)(2) of the Use Fuel Tax Law, exempt from paying the use fuel tax imposed under sections 8651-8651.8 on use fuel consumed while providing such transportation. 2/25/09.